IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO.4620 OF 1992

1. Smt. Kamalabai Sundarlal Kachi
   Occupation - Household.

2. Smt. Gomabai Dnyaneshwar Kachi
   Occupation- Household

3. Shri Bhagwan Sundarlal Kachi
   Occupation-Business.

4. Shrui Vasudeo Sundarlal Kachi,
   Occupation-Service.

5. Shri Prakash Sundarlal Kachi,
   Occupation-service.

   All Nos. 1 to 5 residing at 166, Raviwar Peth, Pune-411 002. ..Petitioners (Orig. Defts.)

V/s.

1. Shri Sakhalchand Chhogaji Bafna
   Occupation-Business,
   residing at 166, Raviwar Peth,
   Pune, since deceased by his heirs-

1A. Smt. Manikben W/o Sakhalchand,
    Bafna, Occupation-Household.

1B. Shri Mangilal Sakhalchad Bafna,
    Occupation-Business.

1C. Shri Ramesh Sakhalchand Bafna
    Occupation-Business.

1D. Shri Champalal Sakhalchand Bafna
    Occupation -Business.

1E. Shri subhash Sakalchand Bafna,
    Occupation-business.

All 1A to 1E residing at 166,
Reviwar Peth, Pune -411002.

1F. Shri Prakash Sakhalchand Bafna,

Occupation-Business.
Residing at 166, Raviwar Peth
Pune-411 002.

Suhasini Mutalik for the petitioner.

None for the respondents.

CORAM : ANOOP V.MOHTA J.

DATE : 5TH JULY , 2005.

ORAL JUDGMENT

. The petitioners are the tenants-original defendants. The respondents are the landlords -original- plaintiffs. The premises in question situated at Ravivar Peth, Pune, consists of three rooms with separate Bathroom and Latrine on the ground floor. The tenancy is monthly. The Landlords filed the suit in the Court of Small Cause Court, Pune, on the foundation of bonafide and reasonable need and for their use and occupation. The same was dismissed by an order dated 18th October, 1989. The appellate Court, however, by the impugned judgment, dated 8th September, 1992, reversed the judgment and allowed the appeal, which resulted in direction to deliver the vacant possession of the suit premises. Therefore, the present writ petition.

2. Heard the learned Counsel, Suhasini Mutalik, appearing for the petitioner. None appeared for the respondents. The petitioners are in occupation of the suit premises, since long. There are 15 family members, who are occupying the three rooms in question. There is no other accommodation, owned by the petitioners. As contended, the respondents are from well known rich family of Pune and even though their family members are 20 in numbers, they are in occupation, 7 rooms. Therefore, the additional need of the three rooms, in question, should not suffice their purpose.

3. The learned Counsel, appearing for the petitioner, has pointed out from the evidence of landlord Mr. M.S. Bafna, which is as under;

> " I am in need of 3 rooms i.e. the whole suit premises. But if that is not possible one room which can be separate from the other two may be given in my possession to satisfy our needs. Defendants will not suffer any hardship thereby."

In this background, even though, the averments, are on the record, for the additional requirement of the premises in question, the reasoning given by the trial

Judge, dismissing the suit appears to be correct and within the frame work of law and the record.

4. The appellate Court, however, reversed the said finding and granted the decree of eviction. There is no doubt that, if the case is made out by the landlord to justify the claim for bonafide and reasonable requirement of the premises and if such application supported by the material evidence on the record and after considering the merits of the contention, also on the touch-stone of the principle of "greater hardship", the Court is bound to consider such prayer of the landlord but if a case is made out by the tenants that the need, as prayed is not bonafide and cannot be said to be genuine and it is further supported by the greater hardship to the tenants, in such circumstances, the Court looking to the purpose and objects of such beneficial legislation, bound to consider, the need and plea of the tenants. In the present case, the facts are quite balanced.

5. The landlords, as per the record, have already constructed the other rooms apart from 7 rooms in occupation Their financial condition is quite sound. As

recorded in the evidence by Mr. Bafna, himself considered one room to satisfy their needs. There is no dispute that there are about 20 family members of the landlords. In the same stroke, there is also no dispute that 15 members of the family of the tenants are staying in the three rooms in question. The learned trial Judge, has also considered the comparative hardship between the parties, the financial condition of both the parties. In this background, the trial Judge also held that, if the tenants are evicted he will suffer greater hardship, as they have no alternative accommodation. The appellate Court further completely overlooked the reasoning given by the trial Court, based on the evidence, in extracted para, as referred above. The greater hardships, if taken note of, according to me it tilt in favour of the tenant and not in favour of the landlords. In this background, I am of the view, that the reasoning given by the trial Court needs to be maintained and that of the appellate court needs to be interfered with.

6. In the result and for the above findings, the present petition is allowed. The impugned judgment dated 8/9/1992 is hereby quashed and set aside and the

judgment dated 18/10/1989 passed by the Small Causes Court, Pune, is restored and the plaintiff's suit stand dismissed.

7. Therefore, the petition is allowed. Rule is made absolute, in terms of prayer clauses (a) and (b). No order as to costs.

[ANOOP V. MOHTA, J.]